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IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CALIFORNIA
SAN FRANCISCO

UNITED STATES OF EMERICA,

Plaintiff,

vs.

BRIAN GUTIERREZ VILLASENOR,

Defendant.

No. 3:18CR00437-001 SI

DEFENDANT'S SENTINCING
MEMORANDUM

On November 13, 2018, Brian Gutierrez Villaseñor pled guilty to Counts 1 and 2 of the Information: **count 1**: possession with intent to distribute 50 grams or more of methamphetamine, a violation of 21 U.S.C. §846(a)(1) and (b)(1)(A)(viii); **count 2**: transporting funds to promote unlawful activity, aiding and abetting, a violation of 18 U.S.C §1956(a)(2)(A). Mr. Gutierrez Villaseñor pled guilty pursuant Rule 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure. The parties agreed to an offense level of 33.

Under 18 USC 3553(a), the Court "shall impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes [of the]... need for the sentence imposed:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.

- 1 (B) to afford adequate deterrence to criminal conduct.
- 2 (C) to protect the public from further crimes of the defendant; and
- 3 (D) to provide the defendant with the needed educational or vocational training,
- 4 medical care, or other correctional treatment in the most effective manner.

5 18 U.S.C. §3553(a)(2)(A)-(D). In determining the minimally sufficient sentence, courts consider
 6 these purposes, as well as “the nature and circumstances of the offense and the history and
 7 characteristics of the defendant,” (§3553(a)(1), “the kinds of sentences available” (§3553(a)(3)),
 8 “the need to avoid unwanted sentence disparities” (§3553(a)(6)), and “the need to provide
 9 restitution” (§3553(a)(7)).

10 The court must also consider the applicable guideline ranges, but those guidelines are
 11 advisory under *United States v. Booker*, 543 U.S. 220 (2005). 18 U.S.C. §3553(a)(4). And the
 12 sentencing guidelines are not merely advisory, but also are to be given no more weight than any
 13 other factor under Section 3553. *Kimbrough v. United States*, 552 U.S. 85 (2007). In short, the
 14 sentencing court retains significant discretion to “tailor the sentence in light of other statutory
 15 concerns as well.” *Id.*

16 Brian Gutierrez Villasenor is 27 years old, has no siblings, and is a life long resident of San
 17 Francisco, where he was born.

18 Defendant was raised primarily by his mother, Martha Villasenor. He has not seen his
 19 father since he was approximately 10 years old. His father resides in Tracy, CA, and is a
 20 cook/chef. Defendant also indicates that he was not close to his father, and had trouble bonding
 21 with him, stating that the relationship was “weird” or “awkward.”

22 His mother currently works as a janitor at a museum in San Francisco. Throughout her life,
 23 she was employed as cleaner or janitor, and was able to provide for her son’s basic needs.

24 Defendant grew up in the Mission District. He was arrested at his residence at 2271 ½
 25 Mission Street, where he has resided since he was 18 years old. Other residents at that address
 26 include his mother, his maternal grand mother, his uncle, and cousins. He is close to his
 27 grandmother, and fondly recalls going to her house after school when he was a child.

1 Defendant grew up struggling with self-esteem issues, primarily due to his being
 2 overweight, once weighing over 300 lbs. He indicates he was an average student. He dropped out
 3 of school in the 9th grade.

4 He also was lonely as a teenager, and experienced extended periods of depression. He
 5 began drinking alcohol, and smoking marijuana at 16 years of age. He seemed to have no other
 6 interests other than drinking, and smoking. In his early twenties, he began using cocaine and
 7 methamphetamine. He was using these drugs heavily prior to the time leading up to his arrest.
 8 He has experienced times of depression, due to his lack of self-esteem, being overweight, and
 9 often feeling lonely. He has no formal or vocational training of any kind.

10 Mr. Brian Gutierrez Villasenor indicates that he wants to obtain his GED, participate in
 11 drug and alcohol treatment, and is also interested in learning a trade while in custody. PSR at ¶¶
 12 48-50, 51, 54-55.

13 Prior to the instant case, he had not been in jail before. He has zero criminal history points.

14 Probation indicates that defendant's net worth is \$55,000 (\$50,000 being a 2016 BMW 4
 15 Series, and \$5,000 cash). However, the reality is that there is a note for the BMW of
 16 approximately \$60,000. See attached documents.

17 The Probation Department concludes that the guideline range is 168 to 210 months
 18 pursuant to a total offense level 35. They recommend, a variance, and a sentence of 132 months
 19 and a \$40,000 fine. The United States Attorney recommends a sentence of 135 months (pursuant
 20 to the plea agreement between the parties of a total offense level 33) and a fine of \$40,000.

21 Defendant is 27 years old, and is a United States citizen, who readily acknowledges that is
 22 involvement in this case was a regrettable decision on his part. He has an insignificant criminal
 23 record. His attitude towards this case indicates that he remains strong regarding his future life,
 24 despite the long sentence that he will surely receive. He is still a young man looking forward to a
 25 productive, and meaningful life once he serves this sentence.

26 Therefore, Mr. Gutierrez Villasenor requests:

- 27 1. A downward variance to a sentence of 120 months;

2. A recommendation that he be admitted to the BOP Residential Drug and Alcohol Program (RDAP)
3. A recommendation to the Bureau of Prisons that he be designated to serve his sentence at a BOP facility as close as possible to the San Francisco Bay Area.
4. That the court not impose the \$40,000 fine, as he has little or no NET assets.

Dated: April 08, 2019

Respectfully submitted,

/s/Ruben Munoz

Ruben Munoz,
Attorney for Brian Gutierrez Villasenor